



# TOWN OF SWAMPSCOTT

## ZONING BOARD OF APPEALS

ELIHU THOMSON ADMINISTRATION BUILDING  
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

**MEMBERS**  
MARC KORNITSKY, ESQ., CHAIR  
DANIEL DOHERTY, ESQ., VICE CHAIR  
BRADLEY CROFT, ESQ.  
ANTHONY PAPROCKI  
ANDREW ROSE

**ASSOCIATE MEMBERS**  
RON LANDEN  
HEATHER ROMAN  
EMILY STUART

## SEPTEMBER 26, 2017 MEETING MINUTES

**Time:** 7:05M – 8:45PM  
**Location:** Swampscott High School, 200 Essex Street, Rm B129  
**Members Present:** M. Kornitsky, A. Paprocki, E. Stuart, H. Roman, R. Landen,  
**Members Absent:** A. Rose, B. Croft, D. Doherty  
**Others Present:** Charles Patsios (Petitioner), Doug Dubin (Resident), Brian Leclair (Attorney), Steve Gadman (Resident), Terry Gadman (Resident), Betty Johnson (Resident), Joanne Reynolds (Resident), George Fitzhenry (Resident), Ryan McShera (Architect), Andrew Levin (Assistant Town Planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:05PM.

### MEETING MINUTES

The minutes from the August 22<sup>nd</sup> meeting were reviewed.

MOTION : by A. Paprocki to approve the August 22<sup>nd</sup> meeting minutes, seconded by E. Stuart, unanimously approved.

### ZONING RELIEF PETITIONS

#### PETITION 17-15

12 JUNIPER ROAD

M. Kornitsky called forth Petition 17-15, petition by Michael Ruiz, seeking a special permit (nonconforming use/structure) for the demolition of an existing one-story garage and foundation, and building a two-and-a-half story addition. Front Setback to decrease three feet, and side setback to change four feet, with the lot coverage increasing 312 feet. This petition was continued from the August meeting.

H. Roman stated that herself and other Board Member E. Stuart are abutters to Mr. Ruiz property and would need to recuse themselves from the Board. M. Kornitsky explained that this would leave a three-person quorum, but explained he would like to wait to open the petition when more members of the Board had arrived.

#### PETITION 15-42

12-24 PINE STREET

M. Kornitsky in the meantime called forth Petition 15-42, a sunset review (8-months) of a use special permit granted to Charles Patsios to allow the petitioner the use of storage of vehicles and light motor vehicle service.

Brian LeClair introduced himself to the Board and stated that he is representing Charles Patsios, who was also present.

M. Kornitsky asked for an update of the property since the last meeting and vote for the sunset provision, in January, 2017). Attorney LeClair explained a brief history of the property, stating in July 2016 the Board voted to review the special permit granted to the property previously, and voted again in January (2017) to extend the special permit. Attorney LeClair explained the building was originally a car dealership with service bays, but is currently being used for automobile servicing. Attorney LeClair described Pine Street facing side of the building, stating there is a garage door and a regular door, both of which are used by the car club who rents the space. Attorney LeClair described the interior, which is divided into different spaces. Attorney LeClair also handed the Board a letter from the former Swampscott Building Inspector, Manuel Bettencourt, which addressed issues at the property since January. The Board reviewed the letter and M. Kornitsky read the letter to the audience present.

Attorney LeClair stated that Mr. Patsios has been a good property owner, adding the mechanicals and wiring at the property were updated, the roof was fixed, and the exterior painted. Attorney LeClair showed the Board an article from the *Swampscott Reporter* on an art show that had taken place at the property. Attorney LeClair stated that he was only aware of the two complaints addressed in Mr. Bettencourt's letter and was unaware of any other complaints to the Building or Police department. Attorney LeClair stated that in his perspective, there hasn't been issues, adding that there were cameras installed at the property, and the tapes are available for review. Attorney LeClair mentioned that in the past, the tapes have shown some complaints were not valid, and asked permission to respond to any made complaints during the meeting.

M. Kornitsky agreed, and opened up the hearing for public comment. M. Kornitsky stated that he is only looking for comments on items since January 2017, and any new facts that concern the use of the property as permitted by the decision.

Steve Gadman, 11 Pine Street stated that he lives directly across from the property, and mentioned that he has complained multiple times about unregistered cars and the regulation against contractor items at the property. Mr. Gadman stated he has photos on his iPad of the violations, M. Kornitsky mentioned that he would like printed copies of the photos, but would look at the photos on the iPad.

Terry Gadman, stated to the Board that there is use on the Eerie street side of the property, and showed pictures of a truck being fixed in the lot, which she stated was taken on August 2<sup>nd</sup>. Ms. Gadman mentioned she has sent photos to the Town Administrator, and stated that the Police are tired of listening to their complaints.

The Gadman's showed pictures of items they stated violated the conditions, including unregistered vehicles, work vehicles parked on the street, and a truck without a license plate being worked on in the parking lot.

Ms. Gadman stated that there was a car show on May 16<sup>th</sup>, which the Gadman's stated the Town told them they did not authorize the car show. The Gadmans continued to point out issues they have with the property, including plows in the winter and an incident when a vehicle was dropped off at the property at 1:30 AM.

M. Kornitsky read from the decision regarding tow-truck drop offs, the Gadman's responded that on July 27<sup>th</sup> a trucked dropped a vehicle off at 1:30AM.

M. Kornitsky continued to read through the decision and conditions.

The Gadman's stated that the whole building is being used, including the Eerie Street access, and stated that on July 4<sup>th</sup> weekend, work took place. The Gadman's stated that after the May 16<sup>th</sup> car show, a car had left tire marks on the street. The Gadman's mentioned they contacted the Police, who looked into the incident, including viewing security

camera footage, but that Mr. Patsios told the Police the cameras could not see the street. The Gadmans described another incident where someone was in their yard.

M. Kornitsky continued to read through the conditions, and the Gadmans stated times they had witnessed these conditions being violated. M. Kornitsky asked if there are idling cars, the Gadmans and members in the audience, stated frequently, adding there are unregistered vehicles in the outside parking area.

Mr. Gadman read a prepared statement to the Board, outlining his frustration with the property. Mr. Gadman in the letter stated that the (now former) building inspector had his motorcycle fixed at the property on June 14<sup>th</sup>, and that when he was at the property, had passed four violations, which Mr. Gadman pointed out. Mr. Gadman added that he had passed this information along to the Town Administrator.

Mr. Gadman continued to describe situations, including vulgar gestures pointed towards him and construction vehicles at the property, including a Spero Construction truck parked in front of the building, and another construction vehicle parked at the building that hasn't moved in three weeks.

Mr. Gadman apologized for not having printed photos, M. Kornitsky mentioned that if continued, he might want to bring printed photos to the next meeting.

M. Kornitsky then asked if Attorney LeClair would like to respond.

Attorney LeClair began by stating that there is a record of complaint about unregistered vehicles Mr. Bettencourt (previous Building Inspector) did not respond to, but that he had sent a notice and talked with Mr. Patsios. Attorney LeClair stated that this issue was resolved and that the Police did come and investigate the unregistered car.

Attorney LeClair stated that he has not spoken with his client regarding some of the new allegations, M. Kornitsky mentioned that hearing could be continued to next month and asked the Board for comments.

R. Landen mentioned that the Board, abutters, and petitioner should discuss, and asked if the petitioner can certify that they comply with all the restrictions? Attorney LeClair stated that to the best of his knowledge they do, but that he had never heard the some of the allegations before.

Attorney LeClair explained background information regarding the contractor, who previously occupied space in the building but has since moved, but that he still parks on Pine, mentioning that he might do this in spite of the neighbors. M. Kornitsky stated that an affidavit of facts should be laid out at the next meeting, E. Stuart added that she would like the hearing continued as well, and to see the photos with the dates. M. Kornitsky mentioned that he wishes to hear from other abutters as well at the next meeting.

Mr. Gadman mentioned that in the permit it states, visitors to the building cannot park on the street in front and stated that Mr. Spero parks there and visits the location frequently. Mr. Gadman and M. Kornitsky then briefly discuss this.

Alice Maguire, 33 Pine Street, stated that the conditions state that the garage doors on the Eerie Street side are not to be open, but that they are constantly open, and that cars and trucks are running which let exhaust out of the building. Ms. Maguire inquired as to what consists of "light work" and if the tenants are changing oil in the building, how the oil is being disposed of. Ms. Maguire stated that she has gone to multiple meetings and reiterated the Police does not want to hear their complaints and described some previous conversations with the Police Chief. Ms. Maguire also mentioned that there is no structure to the hours, and that work happens on both Saturdays and Sundays. Ms. Maguire stated that the owner only painted two sides of the building, and added that the upstairs windows are dangerous, as they are

protruding. Ms. Maguire also mentioned the car show and an art show at which happened at the building, stating that during the art show there was food in the building, and questioned the cleanliness of the building.

Ms. Maguire mentioned that the neighborhood has lost residents, and added that the young men at the property use vulgar language.

Ms. Maguire stated that she understood that the property is zoned for business, but added the neighborhood is also residential, and asked for some restrictions, including no work on Saturday and Sundays, or at night.

M. Kornitsky asked if Attorney LeClair would like to respond. Attorney LeClair stated that having food in the building (during the art show) was reviewed by the Health Department and it was "OK'd", and explained the food was pre-cooked and "OK'd" with a permit. M. Kornitsky asked for a copy of the permit for the next meeting.

Joanne Reynolds, 19 Pine Street, stated that she has been in the neighborhood for 50 years, and reiterated the vulgar language heard in front of the building, described other incidents of vulgar language and obscene gestures. Ms. Reynolds stated there is a "Double-D Construction" sign hanging in the window of the building, Doug Dubin from the audience stated that there is a permit. Ms. Reynolds mentioned that the windows on the downstairs are boarded up, and mentioned they are told cameras are broken when asked to review them.

M. Kornitsky asked Attorney LeClair for a response, Attorney LeClair stated that if there is a permit on the building he could check with the Building Department and gather the information.

Attorney LeClair then handed the Board a Police report from August 2016, to show the Board more context.

Betty Johnson, 14 Eerie Street, stated that she has lived next door for 22 years, and is across from the Eerie Street garage doors. Ms. Johnson mentioned that usually one door is open when someone is working on an antique car. Ms. Johnson mentioned there was an art show, and that it went fine. Ms. Johnson stated that she does not have issues with the people that are working there. Ms. Johnson did however, mention that some people go through her property when trying to take pictures of the property in question. Ms. Johnson stated that some abutters are looking for complaints and explained some instances.

Ms. Gadman mentioned that the cars Ms. Johnson mentioned are not supposed be worked on in that location.

M. Kornitsky invited a response from Mr. Patsios or Mr. Dubin, mentioning that he is also asking that they continue the hearing, which would also allow them to speak next meeting if they choose to.

Mr. Patsios began by stating that he did install cameras and invited the Board to review the tapes. Mr. Patsios mentioned that occasionally some of the old cars will need their batteries jumped, and this is why the hoods are open. Mr. Patsios stated that he has been photographed multiple times over the past year and a half, and has mentioned this to the police. Mr. Patsios refuted the claim of vulgar language at his property, and explained Mr. Orne (previous owner) gave him a snapshot of the properties history when he bought it.

Mr. Patsios mentioned the claims made against the property are unfounded and that the same individuals make the same claims against anyone that's occupied the building. Mr. Patsios described the upgrades he has made to the property, to make it nicer for prospective tenants. Mr. Patsios told the Board that he was instructed by the Police to put up no trespassing signs around his property. Mr. Patsios also added that his property's cameras do work.

Mr. Patsios stated that he has made the effort to fix the building, but that it's history has turned people away. Mr. Patsios also stated that the photos previously shown by the abutters had been taken on another person's property.

Mr. Patsios asked the Board that the next ZBA hearing being final, and to allow him to continue with his property. Mr. Patsios reiterated that he has improved the property along and has spoken with multiple Town departments. Mr. Patsios also reiterated his belief that the claims made by the abutters are fabricated.

Attorney LeClair explained to the Board that a member of the VFW was present who wished to speak.

George Fitzhenry, 26 Essex Terrace explained that he is the finance officer at the VFW and stated that he has had no problems with Mr. Patsios, and stated that the property is a good neighbor and he hasn't had any problems with noise.

M. Kornitsky mentioned that he would be interested in hearing and seeing other abutters that have opinions about the property since January, specifically the Eerie Street garage door side. M. Kornitsky explained he would like to know the frequency of the doors opening and being used, and mentioned other specifics he would like to hear comments on as well.

Attorney LeClair responded by stating that the Eerie Street side provides access for other tenants. M. Kornitsky and Attorney LeClair discussed this briefly. M. Kornitsky asked to hear from Doug Dubin who was also present with Mr. Patsios.

Mr. Dubin stated that he owns Double D Construction, and stated that his trucks have his company's name on the side. Mr. Dubin stated that he owns four old cars and mentioned that friends of the car club have 7 cars in the building. Referring to a previous claim made by the abutters, Mr. Dubin stated that his bobcat was brought to the garage to be greased and have its oil changed. Mr. Dubin also mentioned that there is a red trailer at the property that is registered to Double D construction, but it is for old cars and not construction. Mr. Dubin explained that his dump-truck was at the garage and was put on a lift and worked by him, and stated that he believed he was able to work on his own vehicles. M. Kornitsky and Mr. Dubin briefly discussed the ability to work on personal vehicles that are also work related, M. Kornitsky stated that decisions can change.

Mr. Dubin reiterated the issues with the neighbors and situations in the past. Mr. Dubin stated that the building is minimally used and houses hobbyists, not a business. M. Kornitsky asked about a vehicle that was stated previously to be parked on the side of the property, Mr. Dubin mentioned that he had parked briefly and ran inside the building to grab a tool, and left. M. Kornitsky recommended that even if briefly visiting the property, to park in the parking lot. Mr. Patsios mentioned that previous issues have stemmed from vehicles in the parking lot instead of on the street. Mr. Patsios then voiced his frustration with the restrictions and issues, and explained some ideas he has thought of doing with the property. Mr. Patsios stated that the building design lends itself to uses related to automobiles. Mr. Patsios offered the Board the ability to review the camera tapes from the property, M. Kornitsky inquired about the possibility of a site visit, Mr. Patsios mentioned that would be agreeable. The Board members present mentioned that they would like a site visit. Attorney LeClair stated that they would allow one representative from the neighbors to view the property.

The Board then decided on October 10<sup>th</sup>, 2017, at 4:30PM, and M. Kornitsky explained the site visit process.

M. Kornitsky mentioned some possible conditions for a final decision, but mentioned that it would be up to the Building Inspector and Town Administrator for enforcement.

Attorney LeClair then briefly explained a previous claim about contractor parking.

Attorney LeClair requested electronic files of the photos shown to help validate time and date of the photos, and asked for them in advance of the next hearing. Mr. Patsios and R. Landen briefly discussed the property cameras storage.

MOTION : by M. Kornitsky to continue Petition 15-42 and a site visit on October 10<sup>TH</sup>, R. Landed Seconded, unanimously approved.

## PETITION 17-15

12 JUNIPER ROAD

M. Kornitsky and Mr. Ruiz briefly discussed whether to continue or not, Mr. Ruiz decided to ask for a continuance.

MOTION : by M. Kornitsky to continue Petition 17-15 to October 24<sup>th</sup>, seconded by A. Paprocki, unanimously approved.

## PETITION 17-18

57 BELLEVUE ROAD

This is an application by Ryan McShera of Red Barn Architecture, seeking to demolish an existing nonconforming single-family residence located on a nonconforming site, and requesting a special permit (nonconforming use/structure) and a site plan special permit for the construction of a new home greater than 3,000 sf.

Ryan McShera, the projects architect, began by handing the Board revised plans.

Mr. McShera stated that the current home is nonconforming, violating the side-yard setback on the Bellevue Road side and does not have enough frontage. Mr. McShera outlined what the petitioners are seeking and stated that the petition had already been before the Planning Board for a site-plan review and received comments and recommendations. Mr. McShera mentioned that the Planning Board stated that the landscaping plan would have to be specifically laid out on a plan. Mr. McShera showed a map of the proposed landscaping for the property, this included lots of existing vegetation outside and on the lot lines, and added the plans do not call for removing much of the vegetation on the property. Mr. McShera did state that the plan is to remove the plantings around the foundation but to add new ones.

Mr. McShera stated that the style of the proposed home will have a seaside look and is in keeping with the neighborhood, adding the home will have a gambrel roof with shingle and clap-board siding, and double hung windows. Mr. McShera stated this will all be done to help make the proposed home fit in with the neighborhood.

Mr. McShera stated that he had shown the plans to the abutters and noted that no neighbors were present at the meeting. Mr. McShera handed the Board a letter with signatures on it stating the neighbors had seen the plans. Mr. McShera then asked the Board if they had any questions.

M. Kornitsky inquired about the dimensions, and asked what is being proposed to make the home look less dense? Mr. McShera stated the gambrel roof sloping towards the front will bring the mass to the first floor, and stated he tried hard to minimize the presentation to the street side.

Mr. McShera and M. Kornitsky briefly discussed the lot, Mr. McShera stated that the shape of the lot is affecting the ratio, as the lot is smaller and sized differently than other area lots. M. Kornitsky stated that it is important to understand how the proposed home will look on the lot and in the neighborhood, and asked for A. Paprocki's thoughts.

A. Paprocki asked for the proposed square footage, Mr. McShera responded the new home will be 5,184 sf, including the attic, because the ceiling is above 7.2', which will add 900 plus square-feet. Mr. McShera added that the garage also counts in the measurement with 590 sf. Mr. McShera and M. Kornitsky briefly discussed the calculations and neighboring homes. A. Paprocki inquired about the height and how the proposed compares to the neighborhood. Mr.

McShera stated that he hadn't done a height analysis, but that it meets building height requirements. Mr. McShera and M. Kornitsky briefly discussed the neighboring homes and the proposed.

A. Paprocki asked about the lots topography, Mr. McShera stated that the lot dips in the back, but the plan is to keep the topography close to the current.

H. Roman and Mr. McShera briefly discussed the proposed height of the home and the current home. Mr. McShera and E. Stuart briefly discussed the plot plan and other homes in the neighborhood.

A. Paprocki asked what revisions were done to help with the height and mass, Mr. McShera stated that a widow's walk was taken from the plans in an attempt to be sensible to the neighborhood. Mr. McShera and A. Paprocki briefly discussed the proposal and how it will compare to neighboring properties, M. Kornitsky mentioned that he is familiar with the location, and added that the abutters didn't have comments. M. Kornitsky asked again for abutter comments, there was no one present.

MOTION : by H. Roman to approve Petition 17-18 with the revised plans (9/26/2017) submitted at the meeting for the special permits asked for, seconded by R. Landen, unanimously approved.

M. Kornitsky closed the meeting at 8:45PM.

Andrew Levin  
Assistant Town Planner